IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2557 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIRAMBHAI VALJIBHAI GADHVI

Versus

RANJITSINH MAHOBATSINH ZALA

Appearance:

MR MEHUL S SHAH for appellant No. 1
NOTICE SERVED for Respondent No. 1,2
SERVED BY RPAD - (N) for Respondent No. 1,2
MR VIBHUTI NANAVATI for Respondent No. 3
UNSERVED-EXPIRED (N) for Respondent No. 4

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE C.K.BUCH

Date of decision: 21/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

1. Admit. We have perused the order dated 18.4.2002. As found from the said order, the notice was issued to the respondents in respect of the amount granted by the Tribunal to the appellant claimant on the head of pain, shock and suffering inasmuch as the permanent functional disability accepted by the Tribunal is at 50%. Accordingly we have also perused the record and proceedings while considering the submissions made before us by Mr. Shah. As found, Appeal is required to be disposed of only in respect of the amount awarded by the Tribunal in favour of the appellant claimant on the head of pain and suffering. Mr. Shah appearing for the appellant has sought permission to delete respondent No.4. As found, as per the award passed by the Tribunal, the Tribunal has not fastened any liability on the said respondent. Accordingly permission to delete respondent No.4 is granted. Respondents Nos.1 and 2 are duly served and have chosen not to participate in these proceedings. Mr.Nanavati, learned advocate, waives service of notice of admission on behalf of respondent No.3. By consent of the counsel appearing in the matter, Appeal is fixed forthwith. Printing dispensed with.

2. Mr.Shah, learned advocate, while arguing the matter has taken us through the evidence of the appellant claimant as well as the evidence of Dr. Hotchandani, Orthopedic Surgeon, with the documentary evidence, namely medical certificate of the injuries of the claimant issued by Dr. Hotchandani. Mr.Shah has also brought to our notice that the Insurance Co. has preferred First Appeal No.253/2000 challenging the present award passed by the Tribunal and while dealing with the said Appeal, the Division Bench has as per order dated 8.11.2001 dismissed the Appeal by holding that the Appeal filed by the Insurance co. is not tenable. Accordingly while considering the submission made by Mr. Shah before us, it is the contention of Mr. Shah while taking us through the evidence of claimant and Dr. Hotchandani that as found from the evidence, appellant claimant was a young boy of 22 years of age, working as a cleaner and he met with an accident and in the said accident, he had received bodily injuries on various parts of the body and

in respect of the injury sustained by him on his right leg, he was admitted in the Hospital of Dr.Hotchandani where Dr. Hotchandani has performed operation and steel rod and nail was inserted. He was also hospitalised as an indoor patient for number of days and while filing claim application before the Tribunal, he has claimed Rs.75,000/-- on the head of pain and suffering. The Tribunal after considering the evidence led before it decided the issue of negligence against the opponent driver by holding that because of the negligence of the driver of the truck, appellant claimant has sustained serious injuries. The Tribunal has appreciated the evidence of the injured claimant and the medical evidence; oral as well as documentary evidence. The Tribunal has discussed the evidence of Dr. Hotchandani in its judgment para 7. As found from the evidence of Dr. Hotchandani, he has treated the appellant claimant and during treatment he has performed the operation of the claimant on his right leg. Appellant claimant has remained in hospital as an indoor patient for about 3 months and 20 days and even after the discharge from the Hospital, he has to take treatment as an outdoor patient for about 8 months. Medical Certificate issued by Dr. Hotchandani is at Exh.50. Exh.50 shows about the injury sustained by the claimant as well as the disability found on the appellant claimant. Appellant was working as a Cleaner and as per the injury sustained by him, which is on the vital part of the body, the Tribunal has come to the conclusion that the disability would be 100%. However, the Tribunal has fixed the permanent disability at 50% and looking to the work as a cleaner, which is to be performed by the appellant, it is observed that looking to the injury sustained by the appellant claimant, he could not discharge his duties as a cleaner. Mr.Shah had also placed reliance upon the decision of the Apex Court in the matter of Amar Singh v. Ishwar, reported in AIR 1999 SC 3448. In the said case, the Tribunal has while considering the permanent disability suffered by the injured, assessed the same at 30% and considering the claim made by the claimant on the point of pain and suffering, the Supreme Court has granted Rs.50,000/-- more to the claimant and awarded interest at the rate of 12% P.A. In the present case, the Tribunal has, while considering the evidence, awarded compensation of Rs.15000/-- in favour of the claimant on the head of pain and suffering. Applying the ratio of the judgment of the Apex court and as found, the claimant aged 22 years had met with an accident and the claimant was working at the relevant time as a cleaner and looking to the disability assessed by Dr. Hotchandani, we are of the view that the award of the Tribunal on the head of

pain and suffering is required to be modified and award on the head of pain and suffering is required to be enhanced. As found, the Tribunal has awarded only Rs.15,000/-- to the claimant on the head of pain and suffering. While allowing the claim Application partly the Tribunal has awarded Rs.2,10,000/-- by awarding interest at the rate of 12% from the date of the Application. Considering the award of the Tribunal on the head of pain and suffering, we are of the view that the appellant claimant is entitled to a sum of Rs.50,000/-- on the head of pain and suffering. Accordingly award of the Tribunal, on this head, is required to be modified and the appellant claimant is entitled for additional amount of Rs.35,000/--, making the total of Rs.50,000/-- on the head of pain and suffering. Accordingly while allowing the Appeal partly, we modify the order of the Tribunal by increasing the amount of Rs.15,000/- to Rs.50,000/-, meaning thereby that the appellant claimant is entitled for a sum of Rs.35,000/-- more with interest at the rate of 9% P.A. from the date of the application. Accordingly First Appeal is partly allowed to the above extent. The Award of the Tribunal is modified and the appellant claimant is entitled for a total sum of Rs.2,45,000/--. We confirm the award of interest passed by the Tribunal at the rate of 12% P.A. in respect of the award of Rs.2,10,000/--. However, the appellant is entitled to interest at the rate of 9% P.A. on the additional amount of Rs.35,000/--, granted by this court, from the date of the Application. Rest of the Award passed by the Tribunal is confirmed.

Record and proceedings received by this court is ordered to be transmitted forthwith in favour of the concerned Tribunal.

(D.K.Trivedi,J)

(C.K.Buch,J)

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